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From: Claire Vallin <cvallin@earthjustice.org>
Sent: Wednesday, July 22, 2015 12:59 PM
To: FOIA HQ
Cc: Virginia Ruiz (vruiz@farmworkerjustice.org); Eve C. Gartner
Subject: FOIA Request Submission
Attachments: FINAL Bilingual Labels FOIA 7-22.pdf

Dear Sir or Madam,

Attached please find a Freedom of Information Act Request submitted on behalf of Earthjustice and Farmworker Justice.

Thank you,

Claire Vallin

Claire Vallin
Pro Bono Attorney
Earthjustice Northeast Office
48 Wall Street, 19th Floor
New York, NY 10005
T: 212-845-7394 (direct)
F: 212-918-1556
earthjustice.org



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July 22, 2015

By U.S. Mail and Email

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Email: hq.foia@epa.gov

Re: Freedom of Information request for information related to EPA's language requirements for pesticide labeling under FIFRA and EPA's Spanish Labeling Pilot Project.

Dear Freedom of Information Officer:

On behalf of itself and Farmworker Justice, Earthjustice submits this request for records in accordance with the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

In accordance with FOIA, please provide us with all of the following records:

- 1) Unredacted copies of all records relating to, reflecting, or concerning EPA policy regarding when a pesticide label should include text in a language other than English "to protect the public" within the meaning of 40 CFR § 156.10(a)(3).
- 2) Unredacted copies of all records, data, or studies that EPA relies on in determining whether a pesticide label must include text in a language other than English "to protect the public" within the meaning of 40 CFR § 156.10(a)(3).
- 3) Unredacted copies of all records, data, or studies that EPA has relied upon in developing its Spanish Labeling Pilot Project for domestic pesticide labels.
- 4) Unredacted copies of all EPA communications regarding the Spanish Labeling Pilot Project.
- 5) Unredacted copies of all records dated January 1, 2011 or later relating to any grants, cooperative agreements, or loans of federal funds from EPA to any pesticide registrant or any association, alliance or consortia that includes one or more pesticide registrants.

The use of the word "record" above includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, or any other materials.

The use of the phrase "Spanish Labeling Pilot Project" above refers to the voluntary program initiated by EPA in response to Migrant Clinician Network's 2009 petition to EPA requesting that

EPA require bilingual pesticide labeling under FIFRA. EPA, Spanish Labeling Pilot Project (2014) <http://www2.epa.gov/sites/production/files/2014-07/documents/spanish-labeling.pdf>.

The use of the word “unredacted” above means that we are seeking full disclosure of all information in the requested record. In the event that you determine that you can disclose only some of the information contained in a record that falls within the scope of this request, please provide us with a copy of the record with only the information that you have determined to be properly treated as confidential redacted.

FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552, we request a fee waiver because “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1). As demonstrated below, all of the four factors related to the first fee waiver requirement, as specified in EPA’s FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)-(iv), weigh in favor of granting our fee waiver request.

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.

The subject matter of the requested records concerns “identifiable operations or activities of the Federal government,” 40 C.F.R. § 2.107(l)(2)(i), insofar as the requests relate to plans and activities undertaken, or proposed to be undertaken, by EPA pursuant to requirements in sub-sections 20 (b) and (c) of FIFRA, 7 U.S.C. §136r(b) and (c).

Factor 2: Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.

Disclosure of the requested records is “likely to contribute” to an “increased public understanding,” 40 C.F.R. § 2.107(l)(2)(ii), of government operations or activities because such disclosure will enable the requesters to understand EPA’s language requirements for exports and domestic pesticides under section 3 and section 17 of FIFRA, and to evaluate EPA’s process for reviewing labeling of registered pesticide exports under 40 C.F.R. § 168.69. This information is not already accessible through EPA’s website. *See* Factor 4, below.

Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in the Government’s Registration of Pesticides and its Efforts to Ensure Pesticides have Readable and Understandable Labels in and Outside the United States.

Disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in” learning about the Government’s efforts to ensure pesticides have readable and understandable labels for farmworkers in and outside the United States. Disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in” learning about the Government’s registration process for particular pesticides under section 3a. Each of the requesting organizations has the ability and intent to convey information obtained through this request to the public.

Earthjustice has “expertise” related to regulation of pesticides and the “ability and intention to convey this information to the public.” 40 C.F.R. § 2.107(l)(2)(iii). In particular, Earthjustice is a national nonprofit environmental law firm, which has made safeguarding the environment, workers and the health of endangered species, from pesticide exposures one of its top priorities and has developed expertise in this area. In order to further its work to protect against the dangers of pesticide exposures, Earthjustice has brought numerous lawsuits, represented amici in other lawsuits, and filed several petitions with EPA. *See, e.g., Dow Agrosciences LLC v. National Marine Fisheries Service*, 414 Fed.Appx. 514 (4th Cir. 2011) (represented amici in defense of National Marine Fisheries Service's biological opinion that pesticide manufacturers' insecticides would destroy or harm Pacific salmonids and their habitat); *Northwest Coalition for Alternatives to Pesticides v. U.S. E.P.A.*, 544 F.3d 1043 (9th Cir. 2008) (represented plaintiffs in case seeking review of EPA order denying objections raised to tolerances established for seven pesticides used mostly on fruit and vegetable crops); *United Farm Workers v. Administrator*, slip op., 2010 WL 1293342 (March 31, 2010 N.D.Cal.) (represented plaintiffs in challenge to EPA's re-registration of pesticide chlorpyrifos). *See also* http://www.earthjustice.org/our_work/health_and_toxics/. Because of its expertise in this area, Earthjustice is well-prepared to evaluate the requested records once they are received. In addition, Earthjustice has mechanisms in place to share information obtained from the requested records with the general public and with other interested organizations

Earthjustice can review the information it receives, analyze it, and either write an entry for the Earthjustice blog (which receives approximately 35,000 page views per month) or write an article for publication in the Earthjustice monthly electronic magazine (which has a circulation of approximately 70,000 people). Further, Earthjustice has collaborated with a large number of farmworker groups in the past, like farmworker unions and advocacy organizations, and can disseminate the information to these interested groups. Finally, Earthjustice's full-time health campaigner can disseminate newsworthy information obtained from this request to the media, and Earthjustice's full-time health lobbyist can provide relevant information obtained from this request to elected officials in Washington.

Disclosure of these records to Farmworker Justice will also “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” 40 C.F.R. § 2.107(l)(2)(iii), because Farmworker Justice's core mission is the promotion and protection of farmworker rights primarily through the dissemination of information to farmworkers, their advocates, and the public at large.

Farmworker Justice is a non-profit organization that serves migrant and seasonal farmworkers in the United States. It strives to improve farmworkers' living and working conditions through the dissemination of information to worker advocates, government representatives, the general public and the workers themselves. Farmworker Justice has established itself as a trusted source of clear, reliable information, data, and analysis on farmworker issues for the national and regional media. Farmworker Justice's goal is to expand and improve media coverage of farmworker issues, thus broadening public understanding of farmworker health, labor and immigration policy. In addition to media coverage, Farmworker Justice disseminates information through policy reports and briefs, newsletters, email list-serves, and presentations at conferences. Farmworker Justice also posts information on its website, www.farmworkerjustice.org, which averages 12,000 visitors per month. Farmworker Justice also has a blog, www.harvestingjustice.org, which receives about 1,500 visits a month. In addition to its own publications, Farmworker Justice contributes articles to the publications of other organizations, including those whose mission involves public health, immigrant rights, and civil rights.

Farmworker Justice has greatly expanded its capacity for communications and outreach in the last several years, and has brought greater awareness of important issues to farmworker communities and to the general public. Farmworker Justice is the leading national advocacy organization for migrant and seasonal farmworkers. Its opinion is highly sought for news stories on farmworkers' occupational and environmental health, as well as U.S. immigration and labor policy. Farmworker Justice staff speak at numerous conferences to disseminate information on these issues, including the American Occupational Health Conference of the American College of Occupational and Environmental Medicine, the Workers Injury Law and Policy Group annual conference, meetings of the National Hispanic Leadership Agenda, and national and regional farmworker health conferences. Farmworker Justice has been quoted in major newspapers such as the *New York Times*, the *Washington Post*, the *Chicago Tribune*, the *Los Angeles Times*, the *Dallas Morning News*, the *Wall Street Journal*, and by the Associated Press, as well as numerous regional newspapers and their websites; and Farmworker Justice President Bruce Goldstein has appeared on CNN News, Fox News, C-Span and National Public Radio.

In sum, disclosure of the requested documents is “likely to contribute significantly to public understanding” of EPA’s activities concerning pesticide registrations and labeling requirements, 5 U.S.C. §552(a)(4)(iii), because Earthjustice and Farmworker Justice intend to analyze the information in the released records and to disseminate it to other interested organizations and to the broader public, through one or more of the many communication channels referenced above.

Factor 4: The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.

The public understanding of government operations or activities related to pesticide labeling, “as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent.” 40 C.F.R. § 2.107(l)(2)(iv). Under FIFRA, EPA requires that pesticide export labels be in English and the “predominant or official language” of the importing country. 40 C.F.R. § 168.69(c). In contrast, EPA does not require pesticides sold and used in the United States to be labeled in any language other than English. EPA has consistently declined to require bilingual labeling for domestic pesticides, even as it recognizes that 87% of Spanish-speaking pesticide handlers do not read English. *See* EPA, Spanish Labeling Pilot Project (2014), <http://www2.epa.gov/sites/production/files/2014-07/documents/spanish-labeling.pdf>. Although EPA regulations provide that EPA can require pesticide labels to be in a language other than English if it is “necessary to protect the public,” 40 CFR § 156.10(a)(3), there is very little guidance on how EPA determines whether this criteria has been met. EPA has not published any information pertaining to its process for determining what is “necessary to protect the public,” and very little is known about facts or data EPA relies on in determining that English-only pesticide labels are adequate. A comprehensive internet search for documents related to EPA’s language requirements under FIFRA revealed few instructive documents that shed light on EPA’s decisionmaking in this area.

Because so little is publicly available about EPA’s process for setting language requirements and EPA’s process for ensuring pesticide labels are adequate to protect the public, public understanding of these efforts will undoubtedly be enhanced to a significant extent by disclosures in response to this request.

In addition, the second fee waiver requirement – that the request “is not primarily in the commercial interest of the requester,” 40 C.F.R. § 2.107(l)(1) – is also met here. Each of the requesting organizations is a 501(c)(3) nonprofit organization and does not have any “commercial interest that

would be furthered by the requested disclosure” of information. 40 C.F.R. § 2.107(l)(3)(i). Indeed, Requesters’ sole interest in obtaining the requested information is to broaden public understanding of EPA’s past and present decisionmaking regarding language requirements for pesticide labels under FIFRA.

In sum, this request meets the requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records to Eve C. Gartner at egartner@earthjustice.org, or mail them to:

Eve C. Gartner, Esq.
Earthjustice
48 Wall St., 19th Floor
New York, NY 10005

As FOIA requires, we expect your response within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 212-845-7381.

Thank you for your assistance in this matter.

Sincerely,

Eve C. Gartner